BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHARLES L. RAGAN	)	
Claimant	)	
	)	
VS.	)	Docket No. 1,059,278
	)	
SHAWNEE COUNTY	)	
Self-Insured Respondent	)	

ORDER

STATEMENT OF THE CASE

Respondent requested review of the April 5, 2012, preliminary hearing Order entered by Administrative Law Judge Brad E. Avery. John J. Bryan, of Topeka, Kansas, appeared for claimant. Larry G. Karns, of Topeka, Kansas, appeared for the self-insured respondent.

The Administrative Law Judge (ALJ) found that claimant suffered an accidental injury that arose out of and in the course of his employment. In a separate Order Referring Claimant for Independent Medical Evaluation, the ALJ ordered claimant to undergo an independent medical evaluation by Dr. Edward Prostic.[1] Dr. Prostic was asked to render an opinion regarding whether claimant's accidental injury was the prevailing factor in causing his need for medical treatment. The ALJ did not order payment of any temporary total disability benefits, nor did he order treatment for any of claimant's medical conditions.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the April 5, 2012, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Respondent requests review of the ALJ's finding that claimant suffered an accidental injury that arose out of and in the course of his employment. Respondent further argues that claimant's alleged work accident of October 3, 2011, was not the prevailing factor in causing his injury, medical condition and disability. Respondent argues

[1] The Order Referring Claimant for Independent Medical Evaluation, filed April 5, 2012, was not appealed to the Board, and even if it had been appealed, the Board would not have jurisdiction.

that claimant's alleged accident of October 3, 2011, merely aggravated, accelerated or exacerbated claimant's preexisting condition.

Claimant argues his injuries arose out of and in the course of his employment with respondent and that his accident of October 3, 2011, was the prevailing factor in causing his injuries.

The issue for the Board's review is: Did claimant sustain an accidental injury that arose out of and in the course of his employment with respondent?

FINDINGS OF FACT

Claimant has been employed by respondent in the solid waste department for seven and a half years. On March 28, 2006, he sustained a work-related injury to his left wrist when he picked up a doghouse and threw it into the back of a trash truck. At that time, claimant was sent by respondent to Dr. Donald Mead. X-rays were taken at St. Francis Hospital, and Dr. Mead gave claimant a splint and referred him to Dr. Richard Polly. Claimant saw Dr. Polly on one occasion. Claimant said by the time he saw Dr. Polly, he was feeling a little better, although his wrist still popped. However, he was not able to pop the wrist for Dr. Polly. Dr. Polly told claimant he had a sprain and that it would heal and he would be fine. Claimant was given no treatment by Dr. Polly, and he was not given any restrictions. Dr. Polly's report of May 25, 2006, reveals that x-rays showed claimant had a slight widening of the scapholunate joint. Claimant had clicking in both wrists, with the right wrist worse than the left. Dr. Polly diagnosed claimant with a sprained left wrist but said he did not believe his condition needed surgery.

Claimant returned to work for respondent. Claimant did not miss any time from work, and his left wrist continued to get better. He did not file an Application for Hearing in reference to the March 2006 injury.

In 2011, claimant began to have some twinges in his wrist. Then, on October 3, 2011, he was driving the trash truck, making a sharp turn in a cul de sac. While doing so, he heard and felt a pop and his left wrist "hurt like crazy a few minutes."[2] Claimant said the steering wheel in the trash truck is about two feet in diameter. Claimant said there was a catch in the steering on the truck he was driving. He said that every now and then, where the catch is, the steering will kick back. However, he said he was not sure that was what happened on October 3, 2011, as the incident happened so quickly.

Claimant reported his injury of October 3, 2011, to his supervisor, and respondent sent him again to Dr. Mead. X-rays were again taken of claimant's left wrist. Dr. Mead again gave claimant a splint, and then referred claimant to Dr. John Moore. Claimant said

[2] P.H. Trans. at 8.

Dr. Moore looked at his wrist and reviewed the x-rays taken both in 2006 and 2011, and told him he had a ruptured ligament and would need surgery. Claimant said he feels pain in his wrist, his range of motion has been decreased about 50 to 60 percent, and his grip has diminished.

Dr. Moore's records of his examination of claimant on October 21, 2011, shows claimant gave him a history of injuring his left wrist when turning a steering wheel and hearing a pop in his wrist. Claimant also told Dr. Moore about his injury in 2006. Dr. Moore reviewed the x-rays taken in 2006 and said they "showed a scapholunate disruption."[3] The current x-rays showed a "complete rupture left scapholunate with 3-4 mm space, developing radioscaphoid arthritis."[4] Dr. Moore recommended surgery to reconstruct claimant's scapholunate ligament. In a letter dated December 6, 2011, to claimant's case managers, Dr. Moore stated:

> The surgery suggested is needed due to the preexisting scapholunate ligament rupture, which was reinjured on 10/03/11. It is clear from his medical record and old x-rays that the scapholunate ligament was completely ruptured, however, back in 2006. The symptoms he is having now are a direct extension of that old rupture.
>
> I do not consider turning a steering wheel a traumatic event causing an injury, which is what happened on 10/03/11. That is simply when the last shreds of remaining support for his scaphoid gave way and made his wrist more symptomatic again.[5]

Claimant has not had any injuries to his left wrist other than the work-related injuries in March 2006 and October 2011.[6]

PRINCIPLES OF LAW

K.S.A. 2011 Supp. 44-501b states in part:

> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

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[3] P.H. Trans., Cl. Ex. 3 at 4.

[4] *Id.*

[5] P.H. Trans., Cl. Ex. 3 at 1.

[6] P.H. Trans. at 10-11.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508 states in part:

(d) ''Accident'' means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. ''Accident'' shall in no case be construed to include repetitive trauma in any form.

. . . .

(f)(1) ''Personal injury'' and ''injury'' mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

. . . .

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words ''arising out of and in the course of employment'' as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

. . . .

(g) ''Prevailing'' as it relates to the term ''factor'' means the primary factor, in relation to any other factor. In determining what constitutes the ''prevailing factor'' in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) ''Burden of proof'' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an

> issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[7] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[8]

ANALYSIS

Claimant had a left wrist injury in 2006 which was diagnosed at the time as a sprain. Dr. Polly reviewed the x-ray and examined claimant in 2006. He did not diagnose claimant with a rupture of the ligament. Claimant's symptoms resolved. On March 3, 2011, claimant suffered another injury to his left wrist. Dr. Moore believes that both claimant's 2006 injury and his 2011 injury involved a rupture of the scapholunate ligament. Although Dr. Moore refers to both accidents as a complete rupture, it is apparent that the 2006 accident was a partial rupture that became a complete rupture as a result of the 2011 accident. The October 3, 2011, accident "is simply when the last shreds of remaining support for his scaphoid gave way . . . ."[9]

The October 3, 2011, incident at work was "an undesigned, sudden and unexpected traumatic event." The definition of "accident" in K.S.A. 2011 Supp. 44-508 does not require there to be "a manifestation of force." The pop, followed by significant pain that claimant experienced while turning the dump truck wheel on October 3, 2011, was an accident as defined by statute. Furthermore, that accident not only caused claimant's current symptoms but also his current need for medical treatment because that event resulted in the complete rupture of his scapholunate ligament. The traumatic event is when the last shreds of remaining support for his scaphoid gave way. Claimant sustained a change in the physical structure of his wrist. Before October 3, 2011, claimant had some supporting structure, now he has none. Claimant had been released from treatment and was able to perform his regular job duties after the 2006 accident until the accident of October 3, 2011. The accident of October 3, 2011, was, therefore, the prevailing factor in causing claimant's current injury.

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[7] K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[8] K.S.A. 2011 Supp. 44-555c(k).

[9] P.H. Trans., Cl. Ex. 3 at 1.

CONCLUSION

Claimant sustained personal injury by accident on October 3, 2011, that arose out of and in the course of his employment with respondent.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated April 5, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2012.

_____
HONORABLE DUNCAN A. WHITTIER
BOARD MEMBER

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Brad E. Avery, Administrative Law Judge